

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION

RUBY L. PORTIS, :
 :
Plaintiff, :
 :
vs. :
 : CIVIL ACTION 06-0038-M
JO ANNE B. BARNHART, :
Acting Commissioner of :
Social Security, :
 :
Defendant. :

MEMORANDUM OPINION AND ORDER

In this action under 42 U.S.C. § 1383(c)(3), Plaintiff seeks judicial review of an adverse social security ruling which denied a claim for Supplemental Security Income (Docs. 10-11). The parties filed written consent and this action has been referred to the undersigned Magistrate Judge to conduct all proceedings and order the entry of judgment in accordance with 28 U.S.C. § 636(c) and Fed.R.Civ.P. 73 (see Doc. 17).

Defendant has filed a Motion and Memorandum for Entry of Judgment Pursuant to Sentence Four of 42 U.S.C. § 405(g) with Remand of the Cause to the Defendant (Doc. 14). Defendant has stated that Plaintiff's attorney has no objection to the motion (Doc. 14, p. 2).

Defendant states that

[o]n remand by the Court, the Appeals Council will remand this case to an Administrative Law Judge (ALJ) with instruction to further evaluate Plaintiff's alleged mental and physical impairments; as appropriate, to evaluate Plaintiff's mental impairment under Listing 12.05C; to evaluate whether Plaintiff

has any past relevant work; to evaluate Plaintiff's abuse of alcohol and determine whether it is a contributing factor material in the determination of disability; and, if warranted, obtain vocational expert testimony.

(Doc. 14, p. 1). This is a tacit admission that Plaintiff's application was not appropriately considered and that this action should be reversed. Without reviewing the substantive evidence of record, this Court accepts Defendant's acknowledgment of error.

It appears to the Court that the decision of the Secretary should be reversed and remanded. Such remand comes under sentence four of 42 U.S.C. § 405(g). *See Melkonyan v. Sullivan*, 501 U.S. 89 (1991). For further procedures not inconsistent with this report, see *Shalala v. Schaefer*, 509 U.S. 292 (1993).

Therefore, it is **ORDERED**, without objection from Plaintiff, that Defendant's Motion to Remand under sentence four be **GRANTED** (Doc. 14) and that this action be **REVERSED** and **REMANDED** to the Social Security Administration for further administrative proceedings not inconsistent with the orders of this Court. Judgment will be entered by separate order.

DONE this 12th day of July, 2006.

s/BERT W. MILLING, JR.
UNITED STATES MAGISTRATE JUDGE